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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,806	12/10/2003	George S. Avery	10398-41	8856

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EXAMINER

JUSKA, CHERYL ANN

ART UNIT

PAPER NUMBER

1771

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/01/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

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Office Action Summary	Application No. 10/733,806	Applicant(s) AVERY, GEORGE S.	
	Examiner Cheryl Juska	Art Unit 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. <u>20070224</u> . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____. | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Response to Amendment

1. Applicant's amendment filed December 22, 2006, has been entered. Claim 11 has been amended as requested. Claims 1-10 are cancelled. Thus, the pending claims are 11-20.
2. Said amendment and applicant's arguments are sufficient to overcome the 112, 2nd rejection of claim 11 as set forth in section 6 of the last Office Action. Specifically, the term "lateral excursions" is interpreted as any lateral, horizontal, or transverse deviation of orientation of the fiber from the fiber's central, vertical axis. In other words, the term is basically interpreted as being descriptive of a non-linear or crimped fiber.

Terminal Disclaimer

3. The terminal disclaimer filed on December 22, 20026, disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of Application No. 10/845,858 has been reviewed and is accepted. The terminal disclaimer has been recorded. As such, the double patenting rejection set forth in section 3 of the last Office Action is hereby withdrawn.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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5. Claims 11-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant has amended independent claim 11 to limit the pre-stressed fibers to having “a non-linear shape with *substantially horizontal* lateral excursions when not under tension.” In response to the 112, 2nd rejection of section 6 of the last Office Action, applicant states the following at page 6, 3rd paragraph of the Amendment:

“To one skilled in the relevant art, it would be understood that the term “lateral excursions” means that the fibers are not vertical. Rather they deviate from a central, vertical axis and extend in a substantially horizontal fashion.”

While the specification recites “the lateral/horizontal excursions such as excursion “x” of the fibers 16” at page 3, line 28, the disclosure as originally filed does not provide adequate support that the lateral excursions are *substantially horizontal*. For example, the term “substantially horizontal” encompasses a perpendicular orientation to a vertical axis of pile fibers (or oriented parallel to the turf backing), rather than the disclosed lateral or horizontal deviation from vertical. Thus, claims 11-20 are rejected as containing new matter.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 11 is indefinite for the description of “substantially horizontal lateral excursions” of first fibers, which suggests the first fibers are parallel to the turf backing.

However, it is unclear how said first fibers can be parallel to the backing, while extending upward therefrom (perpendicular thereto).

Claim Rejections - 35 USC § 102

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

9. Claims 11, 12, 19, and 20 stand rejected under 35 USC 102(b) as being anticipated by US 3,940,522 issued to Wessells as set forth in section 8 of the last Office Action.

Applicant traverses the rejection by asserting Wessells teaches away from substantially horizontal fibers in that the reference requires “a vertical orientation for the crimped fibers, which forms a virtual column around the grass-like fibers” (Amendment, page 7, 4th paragraph). Applicant asserts the present invention “can have severely deformed cross-sections and can be tightly drawn down so as to form lateral excursions extending in a predominantly horizontal direction” (Amendment, page 8, 1st paragraph). In response, it is asserted that Wessells clearly discloses non-linear crimped fibers having “lateral excursions” (i.e., any lateral, horizontal, or transverse deviation of orientation of the fiber from the fiber’s central, vertical axis).

Additionally, while the overall fiber of Wessells may be oriented vertically, it is asserted that at least some of the “lateral excursions” or crimps are oriented “substantially horizontal.” The differences that applicant notes (i.e., severely deformed cross-sections and “tightly drawn down”) are not currently recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In*

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re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Therefore, the rejection of claims 11, 12, 19, and 20 by Wessells is maintained.

Claim Rejections - 35 USC § 103

10. Claims 13 and 15-17 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Wessells patent in view of US 6,551,689 issued to Prevost as set forth in section 10 of the last Office Action.

Regarding the rejection of claims over Wessells in view of Prevost, applicant asserts the combination of art “still only suggests fibers that extend upward from the backing in a vertical direction,” rather than the present invention of “fibers that extend upward from the backing in a substantially horizontal direction, i.e., the lateral excursions” (Amendment, paragraph spanning pages 8-9). However, the scope of applicant’s argument is not commensurate in scope with the claims since the claims merely require the non-linear, lateral excursions of the fibers to being substantially horizontal and not necessarily the fibers themselves. Note the 112, 2nd rejection above. Therefore, the above rejection is maintained.

11. Claims 14 and 18 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Wessells patent as set forth in section 11 of the last Office Action.

Applicant has presented no new arguments regarding said rejection (Amendment, page 9, 2nd paragraph). As such, the rejection is hereby maintained.

Conclusion

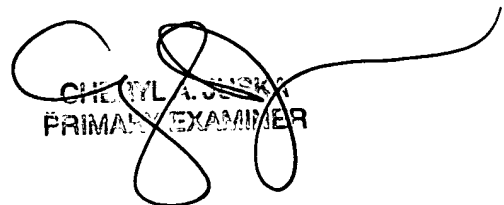
12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

13. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

15. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


CHERYL A. JUSKA
PRIMARY EXAMINER